



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
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Final Amendments to:

310 CMR 7.00: Appendix B(7)  
“Emission Banking, Trading, and Averaging”

Regulatory Authority:  
M.G.L. c. 111, Sections 142A through 142E

May 2008

**Modify 310 CMR 7.00: Appendix B(7) by adding the underlined text and deleting text in strikethrough below:**

(b) Definitions. The definitions in 310 CMR 7.00 apply to 310 CMR 7.00: Appendix B(7). However, the following terms have the following meanings when they appear in 310 CMR 7.00: Appendix B(7). Where a term defined in 310 CMR 7.00 definitions also appears in 310 CMR 7.00: Appendix B(7)(b), the definition in 310 CMR 7.00: Appendix B(7)(b) controls.

**Cancel, cancelled, or cancellation** means transferring an allowance or credit to a cancellation account, or otherwise terminating such allowance or credit in a manner consistent with its program of origin, to prevent subsequent use in a regulatory or voluntary program, or use for any purpose other than compliance with the CO<sub>2</sub> emissions standards of 310 CMR 7.29.

**Cancellation account** means the account established in a Kyoto Protocol signatory country for purposes of canceling allowances. Such account will not be established by the Department.

**Clean Development Mechanism, or CDM**, means a mechanism, created under the Kyoto Protocol, that allows for the creation and use of CDM CERs to demonstrate compliance with emissions targets established by the Kyoto Protocol.

**Clean Development Mechanism Certified Emissions Reduction, or CDM CER**, means a greenhouse gas emissions offset currency created for projects that reduce, avoid, or sequester emissions of greenhouse gases in developing countries. CDM CERs are issued by the Executive Board of the Clean Development Mechanism, and are usable for meeting country-specific greenhouse gas emissions targets established by the Kyoto Protocol.

**European Union Emissions Trading Scheme or EU ETS** means a multi-country, multi-sector greenhouse gas emission trading scheme implemented in 2005 by the European Commission to control emissions of greenhouse gases.

**European Union Emissions Trading Scheme Phase II Allowance or EU ETS Phase II Allowance** means an allowance that can be used during the second trading period of the EU ETS, which lasts from 2008-2012, and can be used to demonstrate compliance with emission reduction targets established by the European Commission.

**Kyoto Protocol** means an international commitment, adopted in Kyoto on December 11 1997, to stabilize greenhouse gas emissions.

**Phase II of the EU ETS** means the second trading period of the EU ETS, which lasts from 2008-2012.

(c) Applicability.

4. Applications for certification or verification of GHG Credits pursuant to 310 CMR 7.00: Appendix B(7)(e) may be submitted by any person.

5. Applications to verify and use EU ETS Phase II Allowances and CDM CERs pursuant to 310 CMR 7.00: Appendix B(7)(i) may be submitted only by affected facilities.

(d) Creation of GHG Credits.

4. Offset Trigger Price

b. By February 15 of 2007, ~~June 1 of 2008, and June 1 of 2009~~, the Department shall determine whether the offset trigger price for the previous calendar year was exceeded, or whether there are insufficient GHG Credits available for purchase at or below the offset trigger price for the previous calendar year in the geographic region specified in 310 CMR 7.00: Appendix B(7)(d)3. In determining whether the offset trigger price for the previous calendar year was exceeded, the Department may consider the average calendar year price of GHG Credits or of applied-for GHG Credits for the previous year, or any other relevant information.

c. Notwithstanding 310 CMR 7.00: Appendix B(7)(d)3., if the Department determines by February 15 of 2007 that the offset trigger price for the previous calendar year was exceeded, or that there are insufficient GHG Credits available for purchase at or below the offset trigger price for the previous calendar year in the geographic region specified in 310 CMR 7.00: Appendix B(7)(d)3., then, for all subsequent years, applicants may apply for certification and verification of projects that occur anywhere on Earth, and certification and verification of greenhouse gas allowances and credits from any allowance or credit system.

d. By June 1 of 2008, the Department shall determine whether there are insufficient GHG Credits available for purchase at or below the offset trigger price in the geographic regions specified in 310 CMR 7.00: Appendix B(7)(d)3. In determining whether there are insufficient GHG Credits available for purchase at or below the offset trigger price, the Department may consider the average price of GHG Credits or applied-for GHG Credits, or any other relevant information. Notwithstanding 310 CMR 7.00: Appendix B(7)(d)3., if the Department determines by June 1, 2008 that there are insufficient GHG Credits available for purchase at or below the offset trigger price in the geographic regions specified in 310 CMR 7.00: Appendix B(7)(d)3., then, pursuant to 310 CMR 7.00: Appendix B(7)(i), affected facilities may apply to verify and use EU ETS Phase II Allowances and CDM CERs that are eligible for use under Phase II of the EU ETS.

5. Trust Trigger Price

b. By February 15 of 2007, ~~June 1 of 2008, and June 1 of 2009~~, the Department shall determine whether the trust trigger price for the previous calendar year was exceeded. In making this determination, the Department may consider the average calendar year price of GHG Credits, of applied-for GHG Credits, or of projects funded or credits or allowances purchased by the GHG Expendable Trust for the previous year, or any other relevant information.

c. Notwithstanding 310 CMR 7.00: Appendix B(7)(d)3. and 4., if the Department determines by February 15, 2007 that the trust trigger price for the previous calendar year was exceeded, then, to demonstrate compliance with 310 CMR 7.29(5)(a)5., affected facilities may pay into the GHG Expendable Trust at the price established pursuant to 310 CMR 7.00: Appendix B(7)(d)5.a. to offset all or a portion of emissions above the historical actual emissions or excess emissions pursuant to 310

CMR 7.29(5)(a)5.c. and d., so that a combination of GHG Credits and payments into the GHG Expendable Trust equals emissions above historical actual emissions plus excess emissions.

6. Notwithstanding 310 CMR 7.00: Appendix B(7)(d)3., 4., and 5., if, at any time prior to September 1, 2009, the Commissioner determines that the price of GHG Credits or of applied-for GHG Credits substantially exceeds either of the price thresholds established in 310 CMR 7.00: Appendix B(7)(d)4. or 5., or if insufficient GHG Credits are available, then the Commissioner may, after public notice in the Environmental Monitor, and an opportunity for public comment: expand the geographic scope; allow payments into the GHG Expendable Trust at the rate set forth in 310 CMR 7.00: Appendix B(7)(d)5; or reduce the annual average CO<sub>2e</sub> tonnage requirements for certification of projects under 310 CMR 7.00: Appendix B(7)(e)3. If the geographic scope is expanded pursuant to 310 CMR 7.00: Appendix B(7)(d)6., then applicants for projects that occur outside of the geographic limits of the United States or the coastal waters thereof shall follow the procedures in 310 CMR 7.00: Appendix B(7)(i). This provision shall have no effect on and after September 1, 2009.

(e) Procedure For Certification and Verification of Emission Reductions, Avoided Emissions, or Sequestered Emissions that occur within the geographic limits of the United States and the coastal waters thereof as GHG Credits.

5. ~~Applications for GHG Credits from other carbon constraining programs.~~ Reserved.

a. ~~The Department may approve allowances or credits from any carbon constraining program as GHG Credits to be used to demonstrate compliance with 310 CMR 7.29(5)(a)5., provided that the Department determines such program or portion thereof has procedures in place to ensure allowances or credits are real, additional, verifiable, permanent and enforceable. The Department shall maintain a list of approved programs.~~

b. ~~The application shall be submitted on a form supplied by the Department and shall include, but not be limited to: a complete description of the project or program as applicable; relevant laws, regulations, policies, and guidelines; and such other information as the Department deems necessary to make a determination pursuant to 310 CMR 7.00: Appendix B(7)(e)5.~~

(f) Public participation procedures for certification and verification applications pursuant to 310 CMR 7.00: Appendix B(7).

2. 310 CMR 7.00: Appendix B(7)(f) shall apply to applications for certification and verification pursuant to this section, instead of the procedures under 310 CMR 7.00: Appendix B(6).

3. The public participation procedures of 310 CMR 7.00: Appendix B(7)(f) and 310 CMR 7.00: Appendix B(6) shall not apply to applications for use pursuant to 310 CMR 7.00: Appendix B(7)(i)5.

(g) Use and Purchase of GHG Credits.

4. ~~Once the Department approves an allowance or credit program or portion thereof pursuant to 310 CMR 7.00: Appendix B(7)(e)5.a., an affected facility may demonstrate compliance with the CO<sub>2</sub> provisions of 310 CMR 7.29 by demonstrating in the 310 CMR~~

~~7.29 compliance report that such allowances or credits have been retired for compliance with 310 CMR 7.29(5)(a)5. and by reporting the price paid for such allowances or credits~~Reserved.

(h) Exchange of GHG Credits for CO<sub>2</sub> Budget Trading Program CO<sub>2</sub> Allowances.

1. Eligibility. GHG Credits shall be eligible for exchange with CO<sub>2</sub> Budget Trading Program CO<sub>2</sub> Allowances provided:

b. The GHG Credits were not created from allowances or credits from another carbon constraining program ~~pursuant to 310 CMR 7.00: Appendix B(7)(e)5.~~

(i) Procedures for verification and use of EU ETS Phase II Allowances and CDM CERs that are eligible for use under Phase II of the EU ETS.

1. Eligibility. Provided the geographic scope is expanded beyond the United States and its coastal waters pursuant to 310 CMR 7.00: Appendix B(7)(d)4. or 6., the following are eligible to be used to demonstrate compliance with the CO<sub>2</sub> emissions standards of 310 CMR 7.29(5)(a)5. provided they have been verified.

a. EU ETS Phase II allowances; and,

b. CDM CERs provided that:

i. The CDM CERs are acceptable and valid for use in Phase II of the European Union Emissions Trading Scheme at the time of application for verification;

ii. The CDM CERs were not created for a project type listed under 310 CMR 7.00: Appendix B(7)(d)2.; and

iii. The CDM CERs are permanent.

2. For purposes of 310 CMR 7.00: Appendix B(7), EU ETS Phase II Allowances and CDM CERs that are eligible for use under Phase II of the EU ETS are presumed to be certified GHG emission reductions, avoided emissions, or sequestered emissions.

3. Applications for verification shall be submitted in a form determined by the Department and shall include but not be limited to:

a. Name of the allowances and credits;

b. Name of the regulatory scheme and issuing body of the allowances or credits;

c. Where applicable, the type of project for which the CDM CERs were created;

d. Serial numbers of the allowances and credits;

e. Total tons of CO<sub>2e</sub> represented by the allowances and credits;

f. Demonstration that the CDM CERs are acceptable and valid for use with Phase II of the EU ETS at the time of application for verification;

g. Identification of the owner of the allowances and credits;

h. Certification by the relevant regulatory body that the allowances and credits have been issued;

i. The price paid, or to be paid, for such allowances or credits.

4. Applications for verification shall be for not less than 20,000 tons CO<sub>2e</sub>, or 18,144 metric tons CO<sub>2e</sub>.

5. Applications to use verified EU ETS Phase II Allowances and verified eligible CDM CERs for compliance with the CO<sub>2</sub> emission standards in 310 CMR 7.29(5)(a)5., shall be submitted in a form determined by the Department and shall include but not be limited to a demonstration and certification that the allowances or credits were cancelled to prevent

their use for any other regulatory or voluntary purposes other than for compliance with 310 CMR 7.29(5)(a)5.

- a. This demonstration shall include but not be limited to:
  - i. Evidence that the allowance or credit was actually purchased;
  - ii. A legal document or other written statement issued by the relevant regulatory body that the allowances and credits have been cancelled; and,
  - iii. Evidence that the allowance or credit has not and cannot be used for any other regulatory or voluntary program.
- b. The certification statement shall be signed under the pains and penalties of perjury by a Responsible Official of the affected facility and the entity that cancelled the allowance or credit (if not the affected facility).

6. Application Deadlines:

- a. Administratively complete applications submitted pursuant to 310 CMR 7.00: Appendix B(7)(i)3. shall be submitted to the Department no later than March 31, 2009.
- b. Administratively complete applications submitted pursuant to 310 CMR 7.00: Appendix B(7)(i)5. shall be submitted to the Department no later than June 30, 2009.
- c. The Department shall have sole discretion to determine whether applications submitted pursuant to 310 CMR 7.00: Appendix B(7)(i)3. or 5. are administratively complete.

7. The Department will make a finding regarding the administrative completeness for applications submitted pursuant to 310 CMR 7.00: Appendix B(7)(i) within 15 business days of submittal, and will make a consistency determination within 30 days of its finding that an application is administratively complete.

8. The Department may approve, approve with conditions, or deny applications submitted pursuant to 310 CMR 7.00: Appendix B(7)(i)3. or 5.

9. Verified cancelled allowances or credits are not GHG Credits under 310 CMR 7.00: Appendix B(7) and cannot be transferred, exchanged pursuant to 310 CMR 7.00: Appendix B(7)(h), or used for any purpose other than compliance with the CO<sub>2</sub> emissions standards of 310 CMR 7.29, or by any entity other than the affected facility that submitted an application pursuant to 310 CMR 7.00: Appendix B(7)(i)3. and 5.



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Response To Comments On  
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May 2008

## Regulation History and Notes

In January 2008, MassDEP proposed amendments to 310 CMR 7.00: Appendix B(7) *Greenhouse Gas (GHG) Credit Banking and Trading*<sup>1</sup> to specify what greenhouse gas reduction projects will qualify for use under 310 CMR 7.29 should MassDEP expand the geographic scope of eligible projects beyond the United States or its coastal waters. Specifically, MassDEP proposed, in the event that MassDEP makes a determination to expand the geographic scope beyond the geographic limits of the United States, to allow affected facilities<sup>2</sup> to use European Union (EU) Emissions Trading Scheme<sup>3</sup> (ETS) Phase II<sup>4</sup> allowances and certain Clean Development Mechanism Certified Emissions Reductions<sup>5</sup> (CDM CERs). These amendments would provide increased certainty to affected facilities and offset project developers. MassDEP also proposed related modifications to the Offset Trigger provision that specifies how MassDEP will evaluate it in the future.

## Public Comment Process

MassDEP held one public hearing and solicited written testimony on the proposed amendments in accordance with Massachusetts General Laws Chapter 30A. On February 12, 2008, MassDEP published notice of the public hearings and public comment period on the proposed amendments in the Springfield Republican and the Boston Globe, and notified interested parties via electronic mail. A public hearing was held on Thursday, March 6, 2008 in Boston. The public comment period closed on March 18, 2008. This document summarizes and responds to comments that were received from two commenters (Evolution Markets and FirstLight Power) during the public comment period. MassDEP appreciates the input from those who testified at the public hearings and submitted written comments into the hearing docket.

## Comments and Response

**Comment:** One commenter stated that EU ETS Phase II allowances and CDM CERs are not, and are not expected to be, available at prices lower than the Trust Trigger Price<sup>6</sup>, and therefore

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<sup>1</sup> The *Greenhouse Gas Credit Banking and Trading Program*, established in 310 CMR 7.00: Appendix B(7), allows for the creation of GHG (Greenhouse Gas) Credits. GHG Credits can be created for emission reduction, avoided emission or sequestered emission projects and can be used for compliance with the CO<sub>2</sub> limits established in 310 CMR 7.29: *Emissions Standards for Power Plants*, or, in certain circumstances, exchanged for CO<sub>2</sub> allowances in accordance with the exchange provisions established in 310 CMR 7.70(5)(c)1.a. and 310 CMR 7.00: Appendix B(7)(h).

<sup>2</sup> The six affected facilities are: Brayton Point, Salem Harbor, Mystic, Canal, Mt. Tom, and Somerset.

<sup>3</sup> The European Union Emission Trading Scheme (EU ETS) is a multi-country, multi-sector Greenhouse Gas emission trading scheme.

<sup>4</sup> Phase II of the EU ETS is the second trading period of the EU ETS, which lasts from 2008-2012.

<sup>5</sup> The Clean Development Mechanism is a mechanism, created under the Kyoto Protocol, that allows for the creation and use of certified emissions reductions (CERs) for GHG offset projects. These CERs may be used to demonstrate compliance with country-specific emissions targets established by the Kyoto Protocol.

<sup>6</sup> The Trust Trigger Price is the price, established in 310 CMR 7.00: Appendix B(7), at which payments may be made into the GHG Expendable Trust for the purpose of complying with the CO<sub>2</sub> emissions standards of 310 CMR 7.29. The GHG Expendable Trust is “the trust established pursuant to 801 CMR 50.00 for the purpose of providing

do not represent a realistic compliance option for affected facilities. This commenter stated that, for some projects that eventually create CDM CERs, there is a delay between the time when the project is completed and the time when the project begins to create CDM CERs, and that offsets generated during this time period can be purchased for prices below the Trust Trigger Price. The commenter suggested that emission reductions that occur during this delay should be eligible for use by affected facilities to comply with the CO<sub>2</sub> emissions standards of 310 CMR 7.29 if they are verified by a third party, and if they follow the CDM methodology for which they are approved during the CDM review process (Evolution Markets). Another commenter requested that MassDEP allow the use of emission reductions that are verified according to CDM methodology, but not approved by the CDM, as another option for international credits that can be used for compliance with 310 CMR 7.29 (FirstLight).

**Response:** MassDEP is finalizing the amendments to 310 CMR 7.00: Appendix B(7) as proposed. MassDEP acknowledges that prices for EU ETS Phase II allowances and CDM CERs are currently higher than the Trust Trigger Price,<sup>7</sup> and will continue to monitor the development of the market for the emission offset commodities detailed by the commenters. However, MassDEP has concluded that limiting international project-based compliance to cancellation of CDM CERs acceptable and valid for use in Phase II of the EU ETS is the most efficient and reliable method of ensuring environmental integrity and achieving certainty about the compliance options that will be available if the geographic scope of the *Greenhouse Gas (GHG) Credit Banking and Trading* program is expanded beyond the geographic boundaries of the United States.

The primary rationale provided by the commenters for further expanding compliance options is that prices for EU ETS Phase II allowances and CDM CERs are higher than the Trust Trigger Price. The GHG Expendable Trust was created to address the issue of price, and the Commissioner's decision on February 12, 2008 to allow payment into the Trust until September 1, 2009 will ensure that, if prices for EU ETS Phase II allowances and CDM CERs remain as they are, the affected facilities will not face unreasonably high compliance costs.

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a separate segregated interest-bearing account for the receipt of payments made pursuant to 310 CMR 7.00: Appendix B(7)(d)5," as defined in 310 CMR 7.00: Appendix B(7)(b).

<sup>7</sup> <http://www.mass.gov/dep/air/laws/triggers.htm>